

to strike in the pending committee amendment.

It is open to a compromise, I suggest, regarding consultation. But to get to the compromise first we have to adopt the Budget Committee amendment to page 25 that strikes the exclusive power—and I emphasize, Mr. President, exclusive power—of the Governmental Affairs Committee that they want to maintain as they wrote S. 1, and is a part that the Budget Committee and chairman of the Governmental Affairs Committee is trying to correct for the reasons that we have outlined.

The basic reason is why change a system that has worked well? Leave well enough alone. That is the heart of the argument. And that is why we hope the Senate will adopt the amendment offered by the Senator from New Mexico.

Mr. President, I had hoped and had agreed earlier, a couple of hours ago, on a time agreement—an hour equally divided. I think the RECORD will clearly show the Senator from Nebraska felt, when we started this debate, we were on controlled time. I find out later that has not been the case.

May I suggest in the interests of moving the Senate along in expeditious fashion, since we have been on this a long time and I suspect not a great deal new is going to be said pro and con on the amendment by the Senator from New Mexico, that we agree to, I suggest, a 20-minute extension of time equally divided from this time forward and then have a vote? Is there any objection to that?

Mr. GLENN. Mr. President, 5 minutes; 3 minutes?

Mr. EXON. How about right now?

Mr. LEVIN. I need about 3 minutes.

Mr. EXON. OK. I still have the floor. Before I lose the floor, let me make one more try.

I ask unanimous consent that there be 10 more minutes of debate, 5 minutes controlled by the Senator from Ohio or his assignee and 5 minutes controlled by the Senator from Nebraska?

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Mr. President, I agree to a time limit but I want to make a couple of phone calls first before I agree to a specific time limit. I think the Senator from Michigan had a couple of comments to make and I will make the phone calls while he is doing that.

Mr. EXON. Let the RECORD show I tried.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, I just have one additional question of the Senator from Nebraska. That has to do with the House of Representatives. We are in a position here where he, as ranking member of the Budget Committee, has said it is inappropriate to vest power in the Governmental Affairs Committee. Yet that is exactly the power that is being vested in the House Committee on Government Op-

erations in this bill. And this amendment does not touch that.

If it is inappropriate to vest that power in a committee of the Senate, it seems to me it is equally wrong to vest it in a committee of the House.

But in terms of vesting power in committees, the Budget Act vests power in the Budget Committee. I want to just make reference to four sections of the Budget Act where, on points of order, the power is vested in the Budget Committee.

I think I have made reference before to section 311(c), for purposes of this section the levels of new budget authority—et cetera:

Shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

There is power vested right in the Budget Committee.

In section 313(e), and these are points of order sections: For purposes of this section the levels of new budget authority, budget outlays, et cetera, "shall be determined on the basis of estimates made by the Committee on the Budget of the Senate."

Power is vested in the Budget Committee directly, right in the Budget Act. Yet one of the two sections which is being stricken here is exactly that. It puts the power to make the estimate of the cost of any mandate in the Budget Committee, exactly as we have done over and over again. There is nothing unusual about that at all. The Budget Committee has explicit power vested in it over and over again in the Budget Act to make these kinds of determinations of outlay. Yet in the bill as introduced, it wants to put that precise power of the Budget Act here—suddenly we find there is a committee amendment by the Budget Committee striking that clear grant of power.

I think it is useful, just in terms of avoiding ambiguity itself. This thing is going to be complicated enough. We might as well not build in an ambiguity. Make it clear. The budget committee has the power. Relative to Governmental Affairs, there is this power granted in the House which is left in place. The Budget Committee apparently does not want this power to be granted to the Governmental Affairs Committee here. It seems to me what is sauce—fair for the goose is fair for the gander. If it is right for the House, it is right for the Senate. My understanding was the Senator from Ohio had worked out an agreement relative to this kind of reference and if that, in fact, was correct, then it seems to me this would be a move away from what was in the original bill agreed to by the Senator from Ohio.

Finally, I would say, Mr. President, I hope that this amendment would either be defeated or be tabled, because unless you have clarity as to where the responsibility lies to both determine whether there is a mandate or an exception, and to determine the amount

of the mandate—unless you have clarity on that, we are making into law ambiguities which are going to bedevil us just about every day we operate around here.

We ought to clarify where the responsibility lies. We have done it before. It was in the original bill. We should leave it the way it was in the original bill and defeat the Budget Committee amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that following my suggestion of the absence of a quorum, that when we come back after the order for the quorum call is rescinded that I retain the right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEMPTHORNE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEMPTHORNE. Mr. President, I yield the floor, and I will look to the Senate from Ohio to make a request.

Mr. GLENN. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The 11th reported committee amendment is the pending question.

Mr. GLENN. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Texas [Mr. GRAMM], the Senator from Oregon [Mr. HATFIELD], and the Senator from Texas [Mrs. HUTCHISON] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] and the Senator from Massachusetts [Mr. KENNEDY] are necessary absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 27, nays 66, as follows:

[Rollcall Vote No. 22 Leg.]

## YEAS—27

Akaka	Feingold	Kohl
Baucus	Feinstein	Leahy
Biden	Ford	Levin
Breaux	Glenn	Lieberman
Bryan	Graham	Nunn
Bumpers	Hollings	Pell
Byrd	Inouye	Reid
Daschle	Johnston	Robb
Dorgan	Kerry	Wellstone

## NAYS—66

Abraham	Frist	Moseley-Braun
Ashcroft	Gorton	Moynihan
Bennett	Grams	Murkowski
Bingaman	Grassley	Murray
Bond	Gregg	Nickles
Boxer	Harkin	Packwood
Brown	Hatch	Pressler
Burns	Heflin	Rockefeller
Campbell	Helms	Roth
Chafee	Inhofe	Santorum
Coats	Jeffords	Sarbanes
Cochran	Kassebaum	Shelby
Cohen	Kempthorne	Simon
Conrad	Kerrey	Simpson
Coverdell	Kyl	Smith
Craig	Lautenberg	Snowe
D'Amato	Lott	Specter
DeWine	Lugar	Stevens
Dodd	Mack	Thomas
Dole	McCain	Thompson
Domenici	McConnell	Thurmond
Exon	Mikulski	Warner

## NOT VOTING—7

Bradley	Hatfield	Pryor
Faircloth	Hutchison	
Gramm	Kennedy	

So the motion to lay on the table the committee amendment on page 25, lines 11 through 25, was rejected.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote.

Mr. GLENN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, will the distinguished Senator from Idaho give me just a moment of his time so I might ask him a question or be involved in a colloquy?

Mr. KEMPTHORNE. Mr. President, I will be happy to.

Mr. FORD. Mr. President two things have happened that bother this Senator considerably.

Last week, I made an effort to stop the House from using frequent flier miles that were paid for by taxpayers for personal use. I was admonished by my friends on the majority side for trying to tell the House what they should do or should not do. The amendment was amended. I lost.

It said to the Senate that under those circumstances, the Senate ought to take care of itself and we ought not to tell the House what to do. Now, as we are, in this amendment and in this bill, setting out a lot of proposals that the House must comply with—change their rules, assign to committees, things of that nature—I keep hearing that this is what the House is asking the Senate to do.

Now, Mr. President, I would like for the distinguished Senator from Idaho to respond to who in the House is telling the Senate what to do, or what the leadership over there is saying, whether they want this in the bill so that it will apply to the House. Can you give the Senate this information tonight? If

not, in the morning. I would like to have an answer.

Mr. KEMPTHORNE. Sure, Mr. President. The Members of the House with whom we have been working closely, and I will name them, are the Chairman, BILL CLINGER; Congressman ROBERT PORTMAN, and Congressman GARY CONDIT. Those are the individuals with whom we worked most closely on this companion legislation in the House.

Mr. FORD. So they are saying to put it in the Senate bill to make the House comply with the rules of the bill we passed?

Mr. KEMPTHORNE. Mr. President, to further answer that, that is correct. They have said in the inquiry, Could you put this in the bill?

However, I tell you there has been further clarification that if the Senate were to determine that it just did not feel appropriate for the Senate to put that House language in there, they can deal with it in a different setting.

Mr. FORD. Mr. President, I appreciate the Senator's being candid with me because I think we are making a mistake. One week, we will not apply the rules to the House and the next week we apply the rules to the House. Something has to be consistent. One was not a very important amendment. This one is.

So I hope that in the discussion with the Senators, between now and maybe working out something on this amendment in the morning, I understand, I hope Senators will look at the whole aspect of saying to the House "You must comply with the rules that we pass." I am not sure that that is right.

I might say to the Senator, with all respect, that I think we are going to have to start being consistent, regardless of what bills we are on, and we will have to say that these rules passed on the Senate do not apply to the House unless the House wants to do that.

So, at some point, if there is not an agreement to the imposition of our rules on the House, we will offer an amendment that will take the application of this legislation to the House.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. FORD. I will be glad to. I have no problem.

Mr. KEMPTHORNE. Mr. President, just in response to that—and I appreciate the idea of consistency—in this particular legislation, it was really many, many hours of working together with the House.

I was not privy to what sort of arrangements the Senator had worked out with the House on his amendment last week.

One of the things that I think may help us to be consistent is when we see that it deals with the House of Representatives, probably part of our information that we exchange with one another is to state to what extent this really is coming from the House. This was a strong request.

Mr. FORD. The Senator says he is working with the chairman. That is

fine. The House leadership, at some point, is going to have to put it all together. I would not want to take a chairman here and say that his advice to me is above the majority leader's. I would go to the leader and to the Senator's elected leadership, and I would get my direction from them rather than a committee chairman, unless they have acquiesced their authority to them.

I am glad the Senator and I wanted to know that. We keep saying, "As the House has advised us, as the House has advised us." I just wanted to know who was advising the Senator, and I am still concerned about applying our rule to the House or passing legislation saying the House must comply. Oh, it has been done, but I think if we are going to stay out one way, we ought to stay consistent. I will be observing it very closely.

I yield the floor, Mr. President

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, at the heart of the unfunded mandates legislation we continue to debate today is the 10th amendment to the U.S. Constitution.

This is an amendment that many here in Washington seem to have forgotten over the years, as more and more power has been taken away from the States and placed in the hands of Federal bureaucrats.

As I said in my remarks on the first day of this session, if I have one goal for the 104th Congress, it is that we will dust off the 10th amendment and restore it to its rightful place in our Constitution.

As a reminder of that goal, I also promised to insert the 10th amendment into the CONGRESSIONAL RECORD every week that we are in session, and I would like to do so now.

Mr. President, the 10th amendment to the U.S. Constitution reads:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Let us always keep those simple yet powerful words in mind, as we continue our work of returning government back to the American people.

## CLOTURE MOTION

Mr. DOLE. Mr. President, having said that, I send a cloture motion to the desk.

Let me say before I send it to the desk, it is obvious to me what is happening here is nothing is happening. We had amendment after amendment on congressional coverage, on which we wasted all of last week, and part of last week on unfunded mandates.

We are told there are 40, 50, 60 amendments. I am not certain how many are germane. This is an issue supported by the Governors, supported

by the mayors, supported by the county commissioners, supported by people all across America—Republicans and Democrats—and supported by the President of the United States.

It is pretty obvious we are not going to be able to move it quickly in the Senate because people are using the rules to frustrate efforts. That is the way it works. I do not fault that. I think we may have done that in the past a time or two.

This is something where there is broad bipartisan support. We would like to complete it this week. If we can get cloture, we may be able to complete it this week.

So I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on S. 1, the unfunded mandates bill:

Bob Dole, Dirk Kempthorne, Don Nickles, Connie Mack, Trent Lott, Thad Cochran, Alfonse D'Amato, Al Simpson, Strom Thurmond, Pete Domenici, Ted Stevens, Bill Cohen, Christopher S. Bond, Frank Murkowski, Jesse Helms, Spencer Abraham, Bob Smith, Larry E. Craig, Mike DeWine, and Bill Frist.

Mr. BYRD. Mr. President, will the leader yield?

Mr. DOLE. I will be happy to yield.

Mr. BYRD. May I say to my friend, I was not aware until just now, in listening to the distinguished leader's comments, that there was any necessity for a cloture motion to be entered. I did not realize that there was a filibuster occurring.

Mr. DOLE. I began to realize it, if I may say to my friend. I can just see maybe the beginning of one.

Mr. BYRD. I thought progress was being made on the bill. It seems to me that the Senate was working its will.

Mr. DOLE. If the Senator will yield, I might say to my good friend from West Virginia, I have indicated to the Democratic leader that if we can reach some agreement—I do not disagree with the Senator from West Virginia totally. I will withdraw the motion if we can agree on limited amendments so we at least have some finite number of amendments, hopefully germane amendments. But not having that, and looking at the fact that my colleagues on the other side would like to have a retreat on Friday of this week, I would like to be accommodating, but I do not know how we can accommodate that request unless we make some progress on what is a bill that enjoys strong bipartisan support.

Mr. BYRD. Is there a list of amendments? I have not seen any list. I heard there might be a list of amendments, so I suggested that I have three. I may not call up any of them. So I thought we were making progress.

Mr. DOLE. It may be progress, depending on how it is defined. I have not checked Webster's lately. But it would be slow progress if it is progress. But it is my hope we can put a list together, with staff working on each side, and submit a copy of that to the Democratic leader and also the Senator from West Virginia, and others who have an interest, and see if we can reach some agreement on a list of amendments. If it is going to be 40, 50, or 60, probably half are nongermane. I hope in the interest of expediency, we will have support for the vote of cloture, which would eliminate all the nongermane amendments.

Mr. BYRD. Mr. President, this kind of underlines everything I was saying earlier today and last Friday and Thursday. What is all this big hurry? Here we are, this is the 17th of January, and why can we not be legislators and take time to understand what is in a bill? I was seeking to have the committees provide committee reports, and it was mainly for that reason that I took the floor and complained that the minority in both committees had been denied that opportunity to have reports in which they could file views, individual views and minority views. Now that has been accomplished.

I say, therefore, that the distinguished leader has done, what he has every right to do—he is the leader and he has introduced a cloture motion. But it seems to me that the Senate is now beginning to work its will, now that it has had access to the committee reports, and I do not know what all the rush is. What is there that is coming behind this measure?

Mr. DOLE. I think the Senator from West Virginia may have some inkling. There may be—I would not suggest that, but I know, knowing the Senator from West Virginia is a master of the game, and I say that in a complimentary way—he knows that a balanced budget amendment may be somewhere on the horizon. And I assume that the further away the better for the Senator from West Virginia. And one way to keep it at a distance is not to rush through anything else that may be on the Senate floor.

I am not suggesting that might motivate the Senator from West Virginia, but it is something that has occurred to me a few times, and I had the same problem on this side of the aisle.

Mr. BYRD. But it is my understanding that the balanced budget amendment has not yet been reported out of the Judiciary Committee.

Mr. DOLE. But we hope it may be by the time we complete action on this bill. We will be coming in later tomorrow morning to accommodate the Judiciary Committee. And we may adjourn in the afternoon to accommodate the Judiciary Committee.

Mr. BYRD. Well, as I said earlier, I may vote for this unfunded mandates bill. I probably will. I do not know yet. I still want to study it some, and may offer an amendment or so. But I am a

little bit surprised that the leader is implying that a filibuster has been going on.

Mr. DOLE. I say to my friend, I do not think there is a filibuster in the real sense. We have not had a real filibuster, as the Senator said the other day, around here for years. I think I would know a real one if one occurred.

It seemed to me, with the broad support we have for this unfunded mandates bill, it is not only filed because of what the leader may consider delay, but also to avoid a lot of nongermane amendments. We went through that turkey shoot last week and the week before.

So it seems to me that one way to talk about unfunded mandates and germane amendments to unfunded mandates is to get cloture and 30 or 40 of those amendments will disappear. We can have the debate the Senator from West Virginia wants. If necessary, I would be willing to see—we can extend the 30 hours by consent. I am not trying to shut anything off, but I would like to eliminate some of these nongermane amendments.

Mr. BYRD. Mr. President, if the majority leader will yield, of course the majority leader knows as well as I do that there is no rule on germaneness in the Senate except with respect, in a small way, to appropriations bills. But this cloture motion just underlines what I said earlier, that there is an effort to ram this bill through, an effort to steamroll it through.

It seems to me that a good legislator would seek to know what is in a bill. I am just trying to play the part of what I think a good legislator ought to do. A good legislator ought to try to understand what is in a bill. And we have been deprived, to a degree, of knowing earlier what was in this bill; having the benefit of a committee report as an explanation of what is in the bill. We were deprived of that, not through my fault, not through anybody's fault on this side of the aisle, but actually against the wishes of certain Senators on this side of the aisle who are on those committees.

A good legislator, it seems to me, would want to know what is in a bill. He would want access to a committee report. I have been in legislative bodies now going on my 49th year and I have found it beneficial to have committee reports. I think the American people want their legislators to know what is in a bill. We owe that to the American people.

So the distinguished majority leader has the right to offer a cloture motion. He is the leader. If he thinks that there is a slowdown here and if he thinks that necessity requires that we have a cloture vote on this bill and then limit it to nongermane amendments, that is his right. Senators from time to time offer cloture motions when there is no filibuster. Their sole objective is to create a situation in which there will not be nongermane amendments.